

THE SECRETARY OF THE TREASURY
WASHINGTON 20220

Administrative Circular No. 159 (Revised)

June 5, 1973

To Heads of Bureaus and Offices

The Department of the Treasury

SUBJECT: Disclosure of Records under the Freedom of Information Act

I. Purpose

This directive provides principles and guidelines on a Department-wide basis to govern the disclosure of records under the Freedom of Information Act, 5 U.S.C. 552 (FoI Act). It has been formulated in the light of the experience of the Department over nearly 6 years since the effective date of the Act and takes into account the principles and guidelines on this subject adopted in June 1970 by the Administrative Conference of the United States, as Recommendation No. 24, and the administrative recommendations of the Committee on Government Operations of the House of Representatives presented in House Report No. 92-1419, 92d Congress, 2d Session, 1972. It also follows the direction taken by the Department of Justice in its disclosure regulations of February 9, 1973, 38 F.R. 4391.

This directive supersedes Administrative Circular 159 and Supplements 1, 2 and 3 to that Circular, issued in 1967, which were intended to provide guidance to the bureaus and offices in the initial implementation of the Act, and Supplement No. 4 issued in 1972 for the purpose of circulating Administrative Conference Recommendation No. 24.

II. The FoI Act and Regulations

5 U.S.C. 552(a) contains the law for the disclosure to the public of (1) regulations and basic statements of policy and procedure to be published in the Federal Register; (2) additional categories of information to be made available for public inspection and copying, with the provision of a current index, and (3) identifiable records to be made available upon request by any person in accordance with published rules which state the time, place, and fees authorized by statute, and procedure to be followed. Section 552(b) specifies the nine categories of matters which may be withheld from required disclosure under section 552(a).

Appropriate regulations on the disclosure of records under section 552 have been issued covering all Treasury operations. These are:

31 CFR Part 1 - Office of the Secretary and bureaus and offices
not having separate regulations

supplementary regulations

31 CFR § 92.9 - Bureau of the Mint

31 CFR § 93.9 - Office of Domestic Gold and Silver Operations

31 CFR Part 270 - Bureau of Accounts

31 CFR Part 323 - Bureau of the Public Debt

31 CFR Part 351 - Office of the Treasurer of the United States

separate regulations

12 CFR Part 4 - Office of the Comptroller of the Currency

19 CFR Part 103 and Part 153, Subpart B - Bureau of Customs

26 CFR Part 601, Subpart G - Internal Revenue Service

27 CFR Part 71 - Bureau of Alcohol, Tobacco & Firearms

III. Scope of this Circular

This Circular establishes the principles to be followed in carrying out section 552(a)(3) and the foregoing regulations, and provides guidelines on procedure to be followed to the extent consistent with the existing governing regulations. Heads of bureaus and offices, and their staffs, need to consider the incorporation of these principles and guidelines to the maximum practicable extent into the foregoing regulations.

The principles defined in this Circular cover the responsibility for coordinating the release of information within and without the Treasury Department, the policy with respect to disclosure, and the considerations for determining the fees. The guidelines cover the procedures for handling requests for records and the requirements for recordkeeping.

IV. Coordination

The official in each bureau or office having responsibility under the regulations for making the initial determination of the availability of a requested record is responsible, if there is a question as to its exemption from disclosure under section 552(b), for seeking the advice of the appropriate legal counsel. The Public Affairs office is to be called upon for advice or decision to the maximum extent appropriate.

If the record is of primary concern to another Government agency, or is generated by another agency, the question of the release of the record or information shall be referred to that agency. For example, the Civil Service Commission has a paramount interest in Official Personnel Folders of Government employees (see 5 CFR Part 294, Subpart G), and the Department of Commerce has primary interest in export control documents although filed with the Bureau of Customs. Records which have national security classification are not to be disclosed except in accordance with Executive Order 11652, as amended, and the implementing Treasury regulations.

V. Disclosure Policies

Officials in the bureaus and offices responsible for FoI operations shall assure that the following policies are followed at all levels:

To the extent permitted by other laws, to make available records which it is authorized to withhold under the FoI Act whenever it determines that such disclosure is in the public interest.

To make certain that office procedures provide the fullest assistance to inquirers, including information relating to where requests may be filed.

VI. Guidelines for Processing Requests

1. Bureau assistance

Each bureau and office shall direct one or more members of its staff to take primary responsibility for assisting the public in framing requests for identifiable records containing the information that they seek. The title of the official to provide such assistance shall be made known in an appropriate FoI Act issuance of the bureau or office.

2. Formulation of requests

(a) Standard forms are not necessary for making requests. Any written request is acceptable if it identifies a record sufficiently to enable the Department personnel to locate the record with a reasonable amount of effort. A standard form may be offered as an optional aid.

(b) Requests calling for all records falling within a reasonably specific category are to be regarded as conforming to the statutory requirement of "identifiable records" if the bureau is reasonably able to determine which particular records come within the request and to search for and collect them without unduly burdening or interfering with operations because of the staff time consumed or the resulting disruption of files.

(c) If a bureau or office responds to a categorical request by stating that compliance would unduly burden or interfere with its operations it should do so in writing, specifying the reasons why and the extent to which compliance would burden or interfere with operations. In the case of such a response the bureau is to extend to the requester an opportunity to confer in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of documents.

3. Timely replies to requests

The official in each bureau or office responsible for the initial determination of availability of records shall comply with, or deny, or acknowledge receipt of, a request for sufficiently identified records within ten working days of such receipt. Acknowledgment of, rather than action upon, the request is appropriate only in one or more of the following circumstances:

(a) The requested records are stored in whole or part at other locations than the office in receipt of the request.

(b) The request requires the collection of a substantial number of specified records.

(c) The request is couched in categorical terms and requires an extensive search for the records responsive to it.

(d) The requested records have not been located in the course of a routine search and additional efforts are being made to locate them.

(e) The requested records require examination and evaluation to determine if they are exempt from disclosure.

(f) The requested records or some of them involve the responsibility of another agency or another bureau or office of the Department whose assistance or views are being sought in processing the request.

When additional time is required for one or more of the above reasons, the written acknowledgment shall include a notation of the reason for the delay and as definite an indication as possible of the time required for a decisive response. If action on the request will be delayed because of reason (f), a copy of the request is to be forwarded immediately to the other agency or office concerned.

4. Denials of requests

(a) Form of denial: A reply denying in whole or in part a written request for a record is to be in writing and shall include:

(i) a reference to the specific exemption or exemptions under the Act authorizing the withholding of the record or a part thereof and a brief explanation of how the exemption applies to the record withheld, and
(ii) an outline of the appeal procedure within the bureau or office and a statement that, in the event of denial upon appeal, the FOI Act makes judicial review available in the U.S. district court in the district in which the complainant resides, or has a principal place of business, or in which the agency records are situated.

(b) Collection of denials: A copy of all denial letters and all written statements explaining why exempt records have been withheld are to be collected in a single central office file (see VIII below).

5. Appeals from denials

(a) Designation of officer: An official to whom a requester may take an appeal from a denial of records is to be publicly designated.

(b) Time for action on appeals: Only one level of intra-bureau appeal is required. Final action shall be taken within 20 working days from the time of filing the appeal, unless novel and difficult questions are involved or the advice of another agency is needed. In those circumstances, the appellant shall be so advised within the 20 days and an indication provided of the date by which a decision may be expected to be made.

(c) Legal advice: Prior to a final denial of an appeal the matter must be referred to the appropriate legal adviser for determination whether consultation with the Department of Justice is necessary, in accordance with the Memorandum from that Department of December 8, 1969, addressed to General Counsels of all Federal Departments and Agencies.

(d) Action on appeals: The grant or denial of an appeal shall be in writing and set forth the exemption relied on, how it applies to the record withheld, and the reasons for asserting it.

(e) Files: Copies of both grants and denials on appeal are to be collected in one file open to the public and indexed, to the extent feasible, according to the exemptions asserted and according to the type or subject of the records requested.

VII. Fees for Providing Information

1. Amount and occasion for fees

The disclosure regulations of the bureaus and offices provide the amount of the fees to be charged for various operations and designate the operations for which charges will be made. Heads of bureaus and offices

shall provide periodic review of the provisions in their regulations governing charges for fees to assure uniformity within the Department, the lowest charge commensurate with the cost of operations, and conformity with the applicable law and regulations. The basic principles are that no charge, except copy charges, shall be made for the routine handling of a request for records nor for determining questions of law or policy. Further, no charge shall be made for the provision of information to other Federal, State or local governmental agencies or officers thereof submitting requests in their official capacities.

2. Applicable law and regulations

Fees for services under the Act are authorized by 31 U.S.C.483a and shall be established in accordance with OMB Circular A-25, as amended, and Treasury Administrative Circular 67 (Revised) and its Supplements. Under 5 U.S.C. 552(a)(3), the schedule of fees must be published.

3. Funds received

Funds received for facsimiles provided or from the performance of other services under the Act shall be deposited in receipt account #2419, "Fees and Other Charges for Other Administrative Services" unless the bureau or office has specific legislative authority to use the receipts to reimburse its appropriations or revolving funds. Provision must be made to identify receipts and handle these funds in a manner that meets the requirements of the General Accounting Office, Treasury requirements, and internal audit procedures of the bureau.

VIII. Maintaining Records

In order to permit evaluation of the Department's performance in regard to the Act, it is necessary to maintain complete records on requests for information. Each bureau and office shall designate an office or officer to maintain a file on requests for records. For purposes of uniformity in recordkeeping, a "request for a record" is defined as a written request for an identifiable record of the bureau or office addressed, which has not been published in the Federal Register or by press release or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the requester makes reference to the FoI Act.

The records to be maintained shall include each request for a record, as defined above, the action taken in accordance with VI, and the records of denials and appeals as set forth in paragraphs 4(b) and 5(e) of VI.

IX. Training of Employees

It is the responsibility of each bureau chief and office head to take whatever steps are necessary to acquaint his employees with the provisions of this Act, including training programs or seminars, and to assure himself that they continue to maintain the expertise necessary to administer this Act in full accord with the policies enunciated in this Circular.



George P. Shultz